IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.619 OF 2004.

Tukaram Namdeo Pilaware. ... Appellant.
Versus.
Mahadeo Namdeo Pilaware & another. ... Respondents.

Shri S.V.Sadavarte for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 20th November, 2007.

P.C.:

1. Heard the Advocate for the Appellant. The Appellant is the original Plaintiff. The Respondents/ Defendants are the real brothers of the Appellant. A suit simplicitor for injunction was filed by the Appellant contending that though the suit property was purchased by a sale deed in the name of his father, he is the real owner of the suit property. According to the case of the Plaintiff/Appellant, after the demise of the father, there was a partition effected and the suit property was allotted to his share and that is how he has become the sole owner of the property. Though the trial Court did not accept the case of the Appellant that he was the sole owner, the trial Court passed a decree of perpetual injunction on the ground that the Appellant has established his exclusive possession. In the Appeal preferred by the Respondents, the District Court has interfered and has set aside the decree.

2. The learned Advocate for the Appellant submitted that the long standing exclusive possession of the

Appellant has been established. He submitted that the suit for partition filed by the Respondents has been dismissed and therefore, in view of the entries in revenue records, the possession of the Appellant ought to have protected by confirming the decree for perpetual injunction.

3. I have considered the submissions. Admittedly the suit property was acquired by the sale deed which stands in the name of the father of the Appellant and the Respondents. The case of the Appellant was that in a partition, suit property was allotted to his share. The trial Court has not accepted the said case. The Appellate Court has recorded a specific finding that there was no evidence on record to show partition. From the judgment of both the Courts below, it appears that the submission regarding the dismissal of the suit for partition of the Respondents was not at all made out before the said Courts.

4. Once it is held that the Appellant has failed to establish his exclusive title, granting perpetual injunction only on the basis of the alleged exclusive possession will amount to granting injunction against co-owners, which is not permissible in law. Therefore, the Appellate Court was justified in interfering with the decree passed by the trial Court. No substantial question of law arises. Second Appeal is dismissed.

Judge.